

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

TOBY GUSTAFSON §  
v. § CIVIL ACTION NO. 6:15cv882  
JOHN RUPERT, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Toby Gustafson, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The magistrate judge ordered Gustafson to file an amended pleading alleging specific facts allowing the court to draw the reasonable inference that the individual defendants were liable for the harm alleged and that defeat a qualified immunity defense with equal specificity. *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012). The magistrate judge provided guidance to Gustafson in filing this amended pleading, specifying that he should provide a concise statement of each of the claims he wished to raise, the persons whom he wished to name as defendants, a statement showing how each named defendant is involved in the incidents forming the basis of the lawsuit, the harm suffered, the relief sought, and whether or not Gustafson filed grievances concerning each of the allegations forming the basis of the complaint. Rather than complying with the order, Gustafson submitted a six-page objection, containing numerous citations to cases, statutes, and rules, asserting that he is not capable of properly and effectively expounding upon the factual or legal bases of his claims.

After review of the pleadings, the magistrate judge issued a report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Fed. R. Civ. P. 41(a). Gustafson received a copy of this report but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the report of the magistrate judge. Upon such review, the Court has determined that the report of the magistrate judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

**ORDERED** that the report of the magistrate judge (docket no. 14) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

SIGNED this 10th day of June, 2016.



MICHAEL H. SCHNEIDER  
UNITED STATES DISTRICT JUDGE